District 9, International Association of Machinists and Aerospace Workers, AFL-CIO *and* Anheuser-Busch, Inc. and Sheet Metal Workers' International Union No. 36, AFL-CIO. Case 14-CD-638

March 8, 1982

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Anheuser-Busch, Inc., herein called the Employer, alleging that District 9, International Association of Machinists and Aerospace Workers, AFL-CIO, herein called Machinists Union, violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by Sheet Metal Workers' International Union No. 36, AFL-CIO, herein called Sheet Metal Workers.

Pursuant to notice a hearing was held before Hearing Officer John S. Cotter on September 15, 1981. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The record shows that the parties stipulated that the Employer, a Missouri corporation with its principal offices and a production facility located in St. Louis, Missouri, is engaged in the brewing, packaging, and nonretail sale of malt beverages. During the past 12 months, the Employer purchased goods and supplies valued in excess of $50,000 directly from sources outside the State of Missouri. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The record shows that District 9, International Association of Machinists and Aerospace Workers, AFL-CIO, and Sheet Metal Workers' International Union No. 36, AFL-CIO, exist for the purpose of dealing with various employers with respect to wages, hours, and other terms and conditions of employment. We find, therefore, that District 9, International Association of Machinists and Aerospace Workers, AFL-CIO, and Sheet Metal Workers' International Union No. 36, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

The Employer operates four J-N-J packers at its Missouri production facility, which pack cartons of bottled beer into cardboard trays. In January 1981, the Employer, to facilitate the packaging process, installed brackets or "hold-downs" on three of its J-N-J packers. The purpose was to ensure that the cartons would not buckle or jam as they entered the "drop zone" of the packer. The fabrication of these parts was performed by employees represented by the Sheet Metal Workers, with their installation and maintenance being assigned to employees represented by the Machinists Union.

On February 2, 1981, a steward for the Sheet Metal Workers filed a grievance over the assignment of the work to members of the Machinists, contending that it should have been assigned to sheet metal workers. By letter, dated June 9, 1981, the Employer denied the grievance. On June 25, 1981, the Sheet Metal Workers advised the Employer by letter of its desire to take the matter to arbitration, and of its willingness to have the Machinists participate in such proceeding. The Machinists, by letter dated July 13, 1981, informed the Employer that it refused to participate in, or to be bound by, any arbitration of the Sheet Metal Workers' grievance. The Machinists Union also stated that it would take whatever economic action was necessary, including strike action by its members, in the event that the Employer assigned the work to members of any other labor organization. The Employer thereafter filed the charge in this proceeding.

B. *The Work in Dispute*

The specific work in dispute involves the installation, adjustment, and maintenance of the hold-down parts on the J-N-J packers utilized by the Employer at its bottling facility in St. Louis, Missouri.

C. *The Positions of the Parties*

The Employer contends that the work in dispute should be awarded to its employees who are represented by the Machinists Union based on its collective-bargaining agreements with the Machinists Union and with the Sheet Metal Workers, past practice, company preference, relative skills, and economy and efficiency of operation.

The Sheet Metal Workers contends that the work in dispute should be awarded to employees represented by it on the basis of Board certification, the collective-bargaining agreements, past practice, relative skills, and economy and efficiency of operation.

The Machinists Union contends that the work in dispute should be awarded to employees represented by it based on the collective-bargaining agreements, past practice, company preference, relative skills, economy and efficiency of operation, and the lack of any job displacement as a result of the assignment of the disputed work.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(d) has been violated, and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

The parties stipulated that there was a probable violation of Section 8(b)(4)(D); that the matter was properly before the Board; and that there was no voluntary method of adjustment of the dispute.

It is clear that the Machinists threatened economic action, including a strike, to protect its claim to the disputed work, and refused to participate in any arbitration of the dispute.

Based on the foregoing, and the record as a whole, we find that the parties have not agreed upon a method for the voluntary adjustment of the dispute, and that there is reasonable cause to believe that an object of the action of the Machinists Union was to force the Employer to continue to assign the disputed work to employees represented by the Machinists Union, and that a violation of Section 8(b)(4)(D) has occurred.

Accordingly, we find that the dispute is properly before the Board for determination under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after giving due consideration to relevant factors.[1] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[2]

The following factors are relevant in making the determination of the dispute before us:

1. Skills and training

The record reveals that the employees represented by the Machinists Union have performed this work since it was determined in January 1981 that such devices were required on the J-N-J machine, packing six-packs of bottled beer. The hold-downs were designed by members of the Machinists Union, fabricated by members of the Sheet Metal Workers, and installed and maintained by members of the Machinists Union. Members of the Sheet Metal Workers have never performed work on the J-N-J packer, and admit that the machinists know more about the machine itself and the manner in which it operates. We find that the factor of relative skills favors an award of the work in dispute to employees represented by the Machinists Union.

2. Collective-bargaining agreements

Article I of the labor agreement between District No. 9, IAM, and the Employer, recognizes the jurisdiction of the Union over the "assembling, erecting . . . and repairing of all machinery of all descriptions and parts thereof . . . excluding . . . sheet metal work, 10 gauge or lighter plant-wide." Article III(B) of the labor agreement between Local Union No. 36, Sheet Metal Workers International Association and the Employer states that the Sheet Metal Workers has jurisdiction over the "fabrication . . . erection . . . adjusting . . . repairing . . . and maintenance of all sheet metal work made of #10 U.S. . . . or lighter gauge metals."

Neither contract specifically mentions the J-N-J packers or any parts thereof, although the Machinists argues that the hold-downs are a structural part of the machinery, thus giving it jurisdiction; while the Sheet Metal Workers contends that the fact that the metal used for the parts is 10-gauge or lighter supports its jurisdictional claims. The record shows, however, that members of both the Machinists and Sheet Metal Workers have installed and maintained metal parts of 10-gauge, lighter and heavier on various equipment. It further shows that

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[1] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO* [*Columbia Broadcasting System*], 364 U.S. 573 (1961).

[2] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

the center divider on the J-N-J packer is made of 10-gauge or lighter metal and that it was installed by members of the Machinists. In sum, neither contract clearly covers the work in dispute, and the practice of all three parties to the dispute does not present a clearly legitimate claim by either Union. Accordingly, we find that the factor of the collective-bargaining contracts does not favor an assignment to the employees represented by either Union.

3. Economy and efficiency of operation and job impact

The record shows that employees represented by the Machinists have operated and maintained the equipment since it was installed. When adjustments are necessary, such adjustments are also made by the same employees. The Employer testified without contradiction that it would not make economic sense to have the parts fabricated by employees of one Union, installed by another, and then have the first make needed adjustments and maintenance.

The record further shows that the assignment of work to the employees represented by the Machinists would not result in any job displacement of employees represented by the Sheet Metal Workers.

Accordingly, we find that the factors of economy, efficiency of operation, and job impact favor an award of the work in dispute to employees represented by the Machinists Union.

4. Employer assignment and preference

The Employer has assigned the work in dispute to its employees represented by the Machinists Union and has stated its desire for a continuation of such assignment. This factor favors an award of the work to those employees.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors, we conclude that employees who are represented by District 9, International Association of Machinists and Aerospace Workers, AFL-CIO, are entitled to perform the work in dispute based on their skills and training, economy and efficiency of operation, job impact, and employer preference and assignment. In making this determination, we are awarding the work in dispute to employees who are represented by District 9, International Association of Machinists and Aerospace Workers, AFL-CIO, but not to that Union or its members. This determination is limited to the particular controversy which gave rise to this dispute.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing facts and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

Employees of Anheuser-Busch, Inc., who are currently represented by District 9, International Association of Machinists and Aerospace Workers, AFL-CIO, are entitled to perform the installation, adjusting, and maintenance of the hold-down devices located on the J-N-J packers at the Employer's facility located in St. Louis, Missouri.